

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 315 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA M KOTTECHA

Versus

RASIKLAL M UPADHYAY,

Appearance:

MR PM THAKKAR for Petitioner
MR DU SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/03/2000

ORAL JUDGEMENT

1. The petitioner herein is the original
defendant-tenant against whom the respondent had filed
the suit being Rent Civil Suit No.747/80 (Old No.357/79)
in the Small Causes Court, Rajkot. The case of the

plaintiff in the said suit was that the plaintiff is the owner of the suit premises which is a house, situated at Kotak Street, Rajkot. That one cabin situated on the ota was rent out to the defendant at the monthly rent of Rs.30/-. According to the plaintiff, the defendant had not paid the amount of arrears of rent for 42 months for the period between 1.9.1975 to 26.2.1979 amounting to Rs.1260/-. The plaintiff, therefore, gave notice on 5.2.1979 demanding the said rent, but inspite of the said notice, the defendant failed to pay any amount of rent. Therefore, since he was in arrears of more than six months and having fail to comply with the demand notice, the plaintiff filed the aforesaid suit for getting the decree for possession on the ground of arrears of rent.

2. The defendant appeared in the suit and filed his written statement at Exh.14. The defendant contended that the plaintiff is not the owner of the suit premises. That contractual rent is not standard rent and that he was ready and willing to pay the rent. He denied the fact about serving any notice under section 12(2) of the Rent Act. He accordingly denied the aforesaid suit of the plaintiff.

3. Learned trial court framed various issues at Exh.15 and after recording the evidence of the parties, came to the conclusion that the plaintiff alone is the owner of the suit property. That Rs.30/- is a standard rent and that the defendant was in arrears of rent for more than six months, that is, from 1975. It was found that the defendant has received the suit notice. Ultimately, on the aforesaid findings the suit of the plaintiff was decreed by the trial court. The aforesaid decree was challenged by the unsuccessful defendant by way of Civil Appeal No.235/82. The said appeal was heard by the District Judge, Rajkot and he dismissed the said appeal with costs. The defendant has ultimately challenged the aforesaid order of the appellate court by filing the present revision application.

4. It is not in dispute that the landlord had given the suit notice at Exh.70 demanding arrears of rent. However, the defendant took the point that he has not received the aforesaid notice and according to the defendant, therefore, there was no question of challenging the said notice. The suit notice at Exh.70 was addressed to Rajendra Mukundray, that is the defendant, at his correct address. Exh.71 is the Registered A.D. acknowledgement showing the signature of the defendant. The landlord has also stated in his evidence about sending such notice to the tenant and also

about acknowledgement receipt from the tenant. The Appellate Judge has discussed the aforesaid aspect in detail in para 17 of his judgment. It has been found that the said contention has been taken by the defendant for the sake of taking the same and that the defendant had never cared to examine his signature at Exh.71. The trial court had also compared the signature in question with other admitted signatures of the defendant and considering the total evidence on record, ultimately it was found that the defendant had received the suit notice. When both the courts have concurrently found that the defendant has received the suit notice, this court sitting in revision application cannot reappreciate the evidence. These are the findings of fact which cannot be disturbed in the revision application.

5. The tenant after receiving the suit notice has not tendered the amount of arrears of rent and there was no dispute of standard rent taken within one month from the receipt of the suit notice. There was no demand of education cess or any other taxes in the suit notice by the landlord. In that view of the matter, the case would clearly falls under section 12(3)(a) of the Rent Act. If, the case falls under section 12(3)(a), there is no escape for the tenant, but to face the decree for eviction. As laid down by the Honourable Supreme Court in 31 (2)GLR, 209, if the tenant has not paid the rent within one month from the receipt of the suit notice and if there is no dispute of standard rent, within one month of the receipt of the suit notice, decree under section 12(3)(a) of the Rent Act is inevitable. In that view of the matter, I do not find any substance in this revision application and the same is required to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs.

6. At this stage, Mr.Thakkar, learned counsel for the petitioner requested for giving reasonable time to vacate the suit premises. According to him, in the city of Rajkot, it is not possible to get alternative accommodation within short period. Mr.D.U.Shah, learned counsel for the respondent has stated that he has no objection if reasonable time is given to the petitioner to vacate the suit premises. In the facts and circumstances of the case, I grant time upto 31st March, 2001 to the petitioner for vacating the suit premises. The aforesaid time is given on the condition that the petitioner shall file an usual undertaking before this court within a period of eight weeks from today. In the said undertaking, the petitioner should clearly mention that he is in exclusive possession of the suit premises

and that without any obstruction he will hand over the vacant possession to the respondent - landlord on or before the aforesaid date. The petitioner also shall pay means profit regularly till handing over the possession of the suit premises. If there is any breach of the aforesaid undertaking or if the said undertaking is not filed within stipulated time, it will be open for the respondent - landlord to execute the decree for possession forthwith.

(pathan)